

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
May 19, 2008
Department of Environmental Quality
Last Chance Gulch Building Room 112, 1100North Last Chance Gulch
Helena, MT

Board members in attendance were Theresa Blazicevich, Karl Hertel, Adele Michels, Steve Michels, and Roger Noble. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Vice-Presiding Officer Noble called the meeting to order at 10:03 a.m.

Vice-Presiding Officer Noble called for a motion to approve the extension of the contract for the Board's subrogation attorney discussed during the executive session. The motion would be contingent on review by the Board's legal counsel and the Governor's office prior to final acceptance.

Mr. Hertel moved to approve the extension of the contract for the Board's subrogation attorney, contingent on review of the proposed contract extension by the Board's legal counsel and the Governor's office prior to final acceptance. Mr. Michels seconded. **The motion was unanimously approved.**

Approval of Minutes – March 31 2008

Mr. Wadsworth pointed out a typographical error on page one of the draft minutes for the March 31 meeting. The error has been corrected. In addition, he stated that, with regard to the discussion concerning Michael's Exxon in Kalispell (Fac ID #15-02330, Release #4587), the owner/operator did not appeal the Administrative Order and the required financial penalty was paid within the required time, satisfying the Order.

Mr. Hertel moved to accept the minutes with the correction of the typographical errors. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. The staff recommended eight releases be determined eligibility (see table below).

Board Staff Recommendations Pertaining to Eligibility From March 20, 2008 thru				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Kalispell	Tri City Quick Stop	15-07490	4601 Oct 2007	Eligible – 4/4/08
Kalispell	Glacier Bank	60-15074	4585 May 2007	Eligible – 4/4/08
Kalispell	Heritage Bank	99-95040	4535 Sep 2006	Eligible – 4/4/08
Belgrade	Rocky Mountain Supply Inc	16-12101	4458 June 2005	Eligible – 4/22/08
Dutton	Lee Reaver	50-01978	4606 Nov 2007	Eligible – 4/16/08
Wisdom	Big Hole Petroleum Inc	99-95062	4125 Aug 2002	Eligible – 5/1/08
Billings	Former Phillips 66 Service Station	56-08318	4611 Aug 2006	Eligible – 5/8/08
Conrad	Former Texaco Station	99-95057	4621 June 2007	Eligible – 5/8/08

Ms. Michels moved to ratify the eligibility applications as listed. Mr. Michels seconded. **The motion was unanimously approved.**

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are four claims totaling \$225,799.84. Mr. Wadsworth provided a brief summary of the work performed for each claim. He noted that the first two claims in the table are for Michael's Exxon in Kalispell. The significant adjustments to the claim are partially a result of the contractor withdrawing some costs from these claims, which will likely be resubmitted at a later date, and partially due to the administrative order adjustment. The adjustments for the JGC Distributing claim totaling \$16,316.51, are for previously claimed costs, ineligible permitting charges, ineligible markups and charges with no supporting documentation.. The costs for the Westgate Exxon claim were for paving, curbing, and landscaping necessary to return the site to roughly its original condition following excavation of the contamination. He reminded the Board that after Board approval of these claims, they will be paid in the order in which they were completed

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments	Co-pay Met with this claim	**Estimated amount to be reimbursed
Kalispell	City Service West	15-02330	20080205C	\$84,128.78	\$61,517.67		\$11,305.56
Kalispell	City Service West	15-02330	20080205F	\$46,584.96	\$38,491.65		\$4,046.66
Missoula	JGL Distributing	32-10907	20080212B	\$53,528.25	\$16,316.51	X	\$19,711.74
Great Falls	Westgate Exxon	7-04004	20080321C	\$41,557.85			\$41,557.85
Total				\$225,799.84			\$76,621.81

Mr. Hertel moved to approve the claims greater than \$25,000 as presented in the table above. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Weekly Reimbursements

Mr. Wadsworth presented to the board for ratification the summary of weekly claim reimbursement for the weeks of March 26, 2008 through April 30, 2008. (See table below). There were 117 claims, totaling \$440,510.59. There were no denied or zero reimbursement claims.

<u>WEEKLY CLAIM REIMBURSEMENTS</u> <u>May 19, 2008 BOARD MEETING</u>		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
March 26, 2008	24	\$79,319.24
April 2, 2008	49	\$88,831.13
April 9, 2008	14	\$62,769.73
April 16, 2008	5	\$88,676.13
April 23, 2008	23	\$71,251.08
April 30, 2008	2	\$49,663.28
Total	117	\$440,510.59

Mr. Hertel moved to ratify the weekly reimbursements as presented. Mr. Michels seconded. **The motion was unanimously approved**

Report on May 1, 2008 Consultant Meeting

Board asked staff to seek comments and suggestions from the consulting industry concerning the Board's proposed legislation and proposed policy changes. The matters discussed were the 2009 proposed legislation, the minimum claim submittal amount, review of large work plan activity, and DEQ's current site prioritization efforts. While there was some discussion concerning the 2009 legislation, there were no new suggestions. The consultants also did not have any serious difficulty with the Board reviewing large-dollar work plans. With regard to the minimum claim submittal, Mr. Wadsworth noted that the current minimum claim amount is \$200, and the staff is suggesting that amount be raised to

\$1,000 per claim. The consultants did not have a serious concern with raising the limit, though there was a discussion of raising it to \$500, rather than \$1,000. There is also a recommended maximum claim amount of \$300,000, because any amount larger than that exhausts the Board's usual monthly cash flow. The group discussed the possibility of the Board waiving its review of claims over \$25,000 if it had already reviewed the proposed work plan that resulted in the claim.

The Board's staff recommends raising the minimum dollar amount allowed on a claim to \$1,000 from \$200, removing the exception for utility bills, because most contractors add those bills to other work on a release, and revising the effective date of the policy to a date in 2009. The staff also recommends converting the policy to a rule.

Mr. Wadsworth suggested that when the Board changes these policies, the policies be converted into rules at the same time. He suggested this conversion occur at the same time that the Board's rules are amended as a result of actions taken by the 2009 legislature.

Karl Hertel moved to accept the minimum application amount policy changes recommended by the staff, to move those matters from policy to rule, and make the changes effective at a date in 2009 determined by circumstances to be most appropriate. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Site Reviews - DEQ

Mike Trombetta, Chief, Hazardous Waste and Underground Tank Management Bureau, introduced the DEQ case managers who briefed the Board on work being proposed for four releases, in order to make the Board comfortable enough that if claims are submitted for more than \$25,000 a piece, the claims associated with the work plans will not need to be brought before the board for review, if found to be consistent with the reviewed work plan. Work plans have been submitted by the consultants and approved by DEQ and are now ready for mobilization.

Bill Hammer briefed the Board on Benchland Farmers Coop in Benchland, thirty miles west of Lewistown. The Coop was being closed. Neil Consultants is handling the work. Mr. Hammer is recommending the site for long term monitoring.

Marcile Sigler and Dan Kenney briefed the Board on the former Unocal Bulk facility and the Former Amoco Bulk facility in Polson. The two sites are side-by-side and the work plans for the two sites were developed together in order to be most cost effective. DEQ is recommending removal and hauling of contaminated soils, and backfilling the excavation, and installation of monitoring wells to quantify groundwater contamination concentrations and potential groundwater and vapor receptors, quarterly sampling, analyzing the samples. Because the risk based screening levels (RBSLs) for some constituents have recently been changed, the volume of contaminated soil that needs to be removed is likely less than originally anticipated. The area is part of a proposed redevelopment area.

Marcile Sigler and Dan Kenney briefed the Board on the Whitefish Title site in Whitefish. The work plan was originally prepared before the recent change in the RBSLs. Because of the RBSL revision it is no longer necessary to excavate the soils, as was proposed in 2006. The site is still a priority one because there is one pocket of high contaminant concentrations; however, that pocket will not be addressed through excavation.

Vice-Presiding Officer recessed the meeting at 11:18 a.m. The meeting resumed at 11:31 a.m.

Mr. Wadsworth brought to the Board's attention the staff's table of work plans reviewed and not obligated as of May 1, 2008. The Board has been provided with an explanation of the Unocal and Amoco Bulk plant site work plans and the Whitefish Title site work plan listed on the table. The remaining three work plans for amounts greater than \$100,000 are the Beacon Carter Bulk Plant, Fox Service Center and Scooter's Sinclair. Each of those work plans is being reevaluated by the DEQ staff.

The Board staff has been obligating approximately \$300,000 to \$350,000 of work plans each month. This is the amount the Board can afford to pay against claims each month. Obligation is based on the priority assigned to each release by DEQ. He reminded the Board that dig outs often cost more than estimated in the work plan. He noted that the Unocal and Amoco Bulk plant work plans, both dig outs, each for \$129,000, take up one month of dollars normally obligated. If the Board decides to obligate those two plans, they will be the only plans obligated in June.

Mr. Wadsworth recommended that the Board give the staff approval to approve and reimburse claims larger than \$25,000 that result from the Unocal and Amoco work plans, as long as the costs are within the estimates presented in the work plans. Should the costs be higher than approved in the work plans, the Board would require that claims be reviewed by the Board.

Vice-Presiding Officer Noble asked if obligating only one of the two sites would be an acceptable alternative, in view of the fact that the Board has limited dollars with which to pay claims, the two work plans will consume most of one month's available cash, and that there is on-going work at other sites for which claims will be received. He expressed an interest in sequencing the work in order to stay within the Board's budget.

Mr. Kenney reminded the Board that the two work plans were developed together in an effort to be as efficient as possible, because the sites could be addressed as one unit, rather than separately. He reminded the Board that the work plans were submitted using the old RBSLs, so the excavation may not be as extensive as anticipated, now that the new RBSLs are in place.

Ms. Michels moved to obligate the dollars for these two work plans over two months, one in June and one in July, to give the contractor authorization to begin work, and to reimburse up to the \$129,000 for each work plan in one month, and the other in the next month. Should the costs for each work plan exceed the \$129,000 approved estimate, the claims must be reviewed by the Board prior to payment. Mr. Hertel seconded.

Mr. Kenney stated that the Department will work with the project manager to implement a phased approach to the work.

Sandi Olsen, Division Administrator, requested that the Board ensure enough flexibility in its motion to allow the Department to work on both sites at the same time, since that may be the most cost effective process.

Mr. Wadsworth suggested the following revision to the language of the motion, to address Ms. Olsen's concerns. The motion is to obligate the \$129,112.43 for the Unocal Bulk Plant in June, and the \$129,112.43 for the Former Amoco LUST 4542 site in July, and to agree to approve claims over \$25,000 that come in associated with those two work plans, as long as they are within the budget provided in the work plan. In addition, the Board authorizes the staff to pay a maximum aggregate amount of \$129,000 per month in claims associated with those two work plans.. Should the costs exceed the approved work plan amount, the Board reserves the right to review those claims. Ms. Michels agreed to the revised language for her motion. Mr. Hertel also agreed to second the revised language. **The motion was unanimously approved.**

2010 Biennial Budget

Ms. Olsen emphasized that the figures presented to the Board were preliminary. The Department is estimating an increase in operating expenses of 3% per year. The figures do not include any increase in personal services costs that may be negotiated between the employees union, the legislature and the Governor's office. The 2008-2009 biennium has included a 3.6% negotiated increase per year. The Department is anticipating a total worst-case budget of approximately \$1.46 Million by 2011. By contrast, the Fiscal Year 2009 budget will be \$1.419 Million.

The Department has requested a decision package, in addition to the regular budget, for a pilot program to develop a more cost effective program to monitor and evaluate sites that are in long-term monitoring status. The Department will negotiate a contract with one consultant to conduct sampling and analysis on all long-term monitoring sites in an area at the same time, rather than having each owner hire a separate contractor to sample their own site. Participation in the pilot program would be voluntary. The Department would keep careful track of the costs of the pilot program, and compare them to the Board staff's cost information to determine if there have been any cost savings. If the program does not realize saving, it will be discontinued.

Mr. Wadsworth addressed the Board staff's portion of the budget. The changes to the personnel services portion of the budget reflect the Department of Administration matrix for setting salaries and union negotiations. The operating cost portion of the budget addresses costs associated with the building and with contracted services, including Agency Legal Services and the Doney law firm. The hourly rate for Agency Legal Services is increasing, while the Doney contract will include more hours at the current rate. The portion of the budget reflecting the anticipated claims payments is derived from the anticipated revenues to be received from the MDT fee minus the operating expenses and debt service. It is not clear how the revenues will be affected by the recent increases in fuel costs.

Fiscal Report

Mr. Wadsworth presented the fiscal report. He pointed out that the loan proceeds are reflected in the miscellaneous revenue line, and the Loan Information summary.

Ms. Olsen remarked that the Department was able to save approximately \$200,000 in expenditures this year, largely from vacancy savings and an extra federal grant they received. As of this budget report, the Department has transferred \$200,000 of authority back to claims.

Board Attorney Report

Due to Mr. Johnson's schedule, with the Board's approval Mr. Wadsworth moved Mr. Johnson's report from the end of the meeting to just after action on the Weekly Reimbursements.

Mr. Johnson presented the attorney's report (see table below). He noted that the Hightower case (Silver Gate) has returned to Montana Administrative Procedure Act status. The case had been stayed pending resolution of the Town Pump Dillon case. Now that the Town Pump case has been determined, the attorney for the Hightower case has requested that the case move forward with the hearing. The hearing examiner has issued the initial order and the pre-hearing process is beginning. No hearing date has been set. Mr. Johnson also noted that the Cenex Supply and Marketing case is set for hearing in July.

Mr. Johnson left the meeting after giving his report.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed.
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently insurance coverage
Great Falls	On Your Way	07-09699 Release #3633	Adjustment to future claims	Hearing requested 2/15/07 Awaiting identification of attorney
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	Hearing requested 2/15/07 Awaiting identification of attorney
Whitefish	Stacey Oil - Don Gray	15-04428 Release #1034	Adjustment to future claims	Hearing requested 2/15/07 Awaiting identification of attorney
Silver Gate	Hightower property	56-14109 Release #4274	Eligibility contested 5/29/07	Hearing examiner appointed May 1, 2008
Havre	Cenex Supply & Marketing	21-07467 Release #826	Reimbursement contested 8/14/07	Scheduling Order signed 8/28/07. Hearing set for 7/21/08
Kalispell	City Service West	15-02330 Release #1208	Eligibility Contested 12/6/07	Hearing requested 12/6/07 Awaiting identification of attorney

Board Staff Report

Mr. Wadsworth presented the Board staff report. He pointed out that there were 273 claims paid in January 2008, totaling \$1.147 Million. This included the expenditure of the \$1 Million loan.

Petroleum Technical Section Report

Mike Trombetta, Hazardous Waste Bureau Chief, presented the PTS report. He provided an overview of the releases reported in calendar year 2007. There were 67 releases, 33 gasoline, 26 diesel, and the remaining releases heating oil, used oil, or other categories. Forty-five percent of the releases were attributable to historic contamination from unknown sources, while 55% were from non-historic, known sources.

Most of the releases from known sources were from pipe systems or dispenser systems, while only a few were from tanks. Spills and overfills accounted for the rest of the known sources. Equipment failure was associated with 34% of the known-cause releases, with equipment damage associated with 22%. Corrosion is associated with 11% of the releases. Releases during fuel transfer accounted for 33% of the releases, many of which were due to human error. The majority of the non-historic 2007 releases could have been limited by properly constructed secondary containment and functioning alarm systems.

Between January 1, 2008 and May 7, 2008 there were 6 new releases identified. Thirty-nine releases have been evaluated for closure, with 31 of them being approved for closure. Two releases are still in the review process.

Ms. Blazicevich commented that Oregon does not allow customers to fill their own tanks. It would be interesting to see if there are fewer fuel transfer releases in Oregon.

With regard to the changes to the RBSLs, he remarked that changes are made to the constituent levels only after new information is obtained from reports on toxicological studies conducted on a national level. If a constituent is shown to be less toxic or less mobile than thought, the acceptable levels to be left in the soil or groundwater can be adjusted.

Public Forum

Hope Stockwell, new research analyst with the Legislation Services Division addressed the board. She is a staff member for the joint EQC/LFC subcommittee that is looking at the Fund's legislative proposals. Senator Storey is chairman, and Representatives Ripley, Heiner and Dickinson are members of the committee. The committee is concerned about the current availability of private insurance, and any effect the Board's legislative proposals would have on policy premiums for homeowners and farmers, if they are approved by the legislature. In addition, the committee has asked for more information on how the risk based monitoring system works, and how DEQ prioritizes its work load due to the limited amount of funding. The committee has questions about natural attenuation and leaving contamination in the ground, public health concerns, and how it all interfaces with the non-degradation standard. She invited the members to attend the subcommittee meeting scheduled for June 4 at 1:00 pm.

The meeting adjourned at 12:35 p.m.

Greg Cross – Presiding Officer